

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

MARLON E. CLOUTIER,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 97-0120-B
	)	
CORRECTIONAL OFFICER	)	
MICHAUD, et al.,	)	
	)	
Defendants	)	

***RECOMMENDED DECISION***

Plaintiff's Complaint alleges that Defendants used excessive force upon him while he was detained at the Kennebec County Jail. Defendants move for summary judgment on the substance of Plaintiff's Complaint, and assert they are in any event entitled to qualified immunity, which shields government officers "from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated.'" *Hegarty v. Somerset County*, 53 F.3d 1367, 1373 (1st Cir. 1995) (quoting *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)).

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is

entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

Defendants are likely correct in their assertion that the standard against which their conduct is to be measured is the same in this excessive force case whether the question is substantive liability or qualified immunity. *Roy v. Inhabitants of the City of Lewiston*, 42 F.3d 691, 695 (1<sup>st</sup> Cir. 1994) (*quoted in, Hodsdon v. Town of Greenville*, \_\_\_ F. Supp. 2d \_\_\_, 1999 WL 364268 (D. Me. 1999)). In the end, the question is whether the application of force is reasonably related to the legitimate goal of maintaining the security of the institution. *Block v. Rutherford*, 468 U.S. 576, 584 (1984) (citations omitted).

Viewing the evidence in the light most favorable to Plaintiff, the Court is satisfied that summary judgment is inappropriate under either of Defendants' theories in this case. Plaintiff has presented evidence supporting his claim that he offered no provocation, but was nevertheless thrown against the wall and to the floor. Plaintiff has also offered evidence tending to discredit Defendant Michaud's assertions that Plaintiff was unruly and threatening, and that only minimal force was used.<sup>1</sup> The

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<sup>1</sup> Both parties to this Motion have presented unsworn testimony in support of their respective positions. *See, eg., Garside v. Osco Drug*, 895 F.2d 46, 49 (1<sup>st</sup> Cir. 1990) ("[i]n summary judgment proceedings, answers to interrogatories are subject to exactly the same infirmities as affidavits")

Court concludes that there are genuine issues of material fact precluding the entry of judgment on whether Defendants' conduct was reasonably related to a legitimate governmental objective. Accordingly, I recommend the Motion for Summary Judgment be DENIED.

### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated on: August 18, 1999

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(citation omitted); Fed. R. Civ. P. 56(e) (“[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein”).